

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2623-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

FRANK E. RATCLIFF,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Counsel for Frank E. Ratcliff has filed a no merit report pursuant to RULE 809.32, STATS. Ratcliff has responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. We therefore affirm the trial court's judgment.

The State charged Ratcliff with nine counts of forgery. After the preliminary hearing, the State issued an information adding one forgery charge and one count of robbery by use of force. The charges pertained to four alleged victims, and Ratcliff moved for four separate trials, one per victim. He also moved to dismiss the tenth and eleventh counts. The trial court denied both motions.

Ratcliff then agreed to plead no contest to four of the forgery charges. In exchange for the plea, the State dismissed the remaining seven charges and a repeater allegation. The parties jointly recommended two concurrent seven-year prison sentences followed by two concurrent but stayed five-year prison sentences with ten-year probation terms. The trial court accepted Ratcliff's plea and sentenced him to the recommended terms. He received 397 days of sentence credit.

Ratcliff cannot succeed on a motion to withdraw his plea because he knowingly and voluntarily pled no contest. Before accepting the plea, the court established that Ratcliff understood and waived his rights to a jury trial, confrontation and protection against self-incrimination. The court adequately informed Ratcliff of the elements of the charges and the potential punishment. The court also properly inquired as to Ratcliff's ability to understand the proceedings and the record independently establishes that he understood the proceedings. The State did not improperly induce Ratcliff to plead no contest and Ratcliff exercised his free will in accepting the plea bargain. Finally, the court determined that an adequate factual basis existed for the charges. The court therefore complied with the requirements set forth in *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12, 21 (1986), to ensure a knowing and voluntary plea.

Counsel's no merit report addresses whether trial counsel was ineffective when he failed to object to an in-court identification of Ratcliff at the preliminary hearing, when he did not pursue a motion to suppress that identification and when he negotiated Ratcliff's plea. Counsel's potential ineffectiveness at and after the preliminary examination only pertained to the robbery charge, which was dismissed. Any potential ineffectiveness issue is therefore moot. As for counsel's representation of Ratcliff during the plea negotiations, the record contains nothing to support an inference of ineffectiveness. In fact, Ratcliff received a very advantageous plea bargain. He faced potential sentences totaling sixty-four years but, as a practical matter, will serve less than two years more than he is now concurrently serving on an unrelated conviction, unless his probation is revoked. As for the existence of any new factors justifying a reduced sentence, counsel correctly notes that none are present in this case.

Counsel also addresses whether the trial court properly denied Ratcliff's motion for severance and his motion to dismiss the tenth and eleventh counts of the information. Both issues were waived by Ratcliff's no contest plea. *County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984).

In his response to the report, Ratcliff adds a claim of prosecutorial misconduct at the preliminary hearing, ineffective assistance of counsel in failing to raise that issue, ineffectiveness in failing to properly investigate his defense and an erroneous exercise of the trial court's sentencing discretion. The first issue is also waived by the plea, and issues with regard to the preliminary hearing are not subject to postconviction review in any event. *State v. Webb*, 160 Wis.2d 622, 628, 467 N.W.2d 108, 110 (1991). Whether counsel ineffectively failed to raise

the issue is therefore moot. As for counsel's alleged failure to properly investigate the case, no facts of record substantiate Ratcliff's allegation. Additionally, Ratcliff does not plausibly explain why he agreed to plead no contest if he was dissatisfied with counsel's performance. On earlier occasions, Ratcliff had promptly informed the court and counsel of any dissatisfaction with his representation, and had already obtained two substitutions of counsel. Finally, Ratcliff received the sentence that he bargained for, and is in no position to now challenge it.

Our independent review of the record discloses no other potential issues for appeal. We therefore affirm the judgment of conviction and relieve Ratcliff's counsel of any further representation of him in this matter.

By the Court.—Judgment affirmed.

